

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SIDNEY E. SMITH III and)
JILL P. SMITH, Executors of the Estate of)
SIDNEY E. SMITH, JR., deceased)
Plaintiffs)
v.) CIVIL ACTION NO. 02-264 ERIE
UNITED STATES OF AMERICA,) ELECTRONICALLY FILED
Defendant)

PLAINTIFFS' SUPPLEMENTAL REQUEST FOR JURY INSTRUCTIONS

Plaintiffs SIDNEY E. SMITH III and JILL P. SMITH, Executors of the Estate of Sidney E. Smith, Jr., deceased, by and through their attorneys, MacDonald, Illig, Jones & Britton, LLP, request that the following additional instructions be given to the jury in the trial of this case. Plaintiffs reserve the right to request additional instructions and to request the withdrawal or modification of any of the following instructions if the trial of this case should make such action appropriate.

Respectfully submitted,

s/W. Patrick Delaney

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PLAINTIFFS' REQUESTED JURY INSTRUCTION NO. 11(a)

You will recall that Mr. Sandy Smith testified on the nature of the shipping business and its operations, and the fair market value of a limited partnership interest in the Smith Family Limited Partnership. Mr. Smith is not an expert. However, as is the case here, the Federal Rules of Evidence do permit a witness who is an owner or officer of an entity to give an opinion on the value of that entity, as long as it is based on his own day to day participation and knowledge of its affairs. If you find that Mr. Smith's testimony is based on his personal knowledge and such testimony is helpful to you in understanding the subject upon which he testified, you may consider such testimony in determining the facts relating to this witness' testimony.

Federal Rules of Evidence 701

Federal Rules of Evidence 701 Comment

Asplundh Mfg. Div. v. Benton Harbor Eng.'g, 57 F. 3d 1190, 1196 (3d Cir. 1995).

Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153 (3d Cir. 1993).

Pennsylvania Suggested Standard Jury Instructions 5.25

Accepted _____ Rejected _____ Modified _____

Respectfully submitted,

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